90-701

No. _____

Supreme Court, U.S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1990

A.L. LOCKHART, Superintendent, Arkansas Department of Correction; LARRY NORRIS, Warden, Maximum Security Unit, Arkansas Department of Correction — PETITIONERS

V.

BILAL ALI SALAAM, a/k/a KEVIN ROBINSON — RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eighth Circuit has improperly substituted a "balancing test" in determining the reasonableness of a prison policy for the deference standard enunciated in *Turner v. Safley* creating a split in the circuit courts of appeals in the proper application of *Turner*?

2. Whether the Eighth Circuit improperly applied the *Turner* analysis to a "reasonable alternative" and then failed to analyze the prison policy itself?

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No. _____

In the
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OCTOBER TERM, 1990

A.L. LOCKHART, Superintendent, Arkansas Department of Correction; LARRY NORRIS, Warden, Maximum Security Unit, Arkansas Department of Correction — PETITIONERS

V.

BILAL ALI SALAAM, a/k/a KEVIN ROBINSON — RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

A.L. Lockhart and Larry Norris, the petitioners herein, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The panel opinion of the Court of Appeals is reported as *Salaam v. Lockhart*, 905 F.2d 1168 (8th Cir. 1990). It is reprinted in slip opinion form in Appendix B to this petition.

The Judgment and Memorandum and Order of the District Court are unreported. They are reprinted in slip opinion form in Appendix C and D to this petition.

JURISDICTION

The final judgment of the Court of Appeals was entered on June 13, 1990, with a petition for rehearing denied on July 27, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . "

STATEMENT OF CASE

Respondent was committed to the Arkansas Department of Correction under the name Kevin Robinson and later had his name legally changed to, Bilal Ali Salaam. Respondent and another inmate filed a *pro se* complaint under 42 U.S.C. §1983, contending that their names were changed as part of their religion, but that the petitioners required them to use the names under which they were committed on their clothing, in "institutional functionings" and on their mail. Respondents contended that the petitioners' commitment name policy abridged their First Amendment rights. All parties consented to the Magistrate's jurisdiction and the case was referred to Magistrate H. David Young by Order of the Court.

Following a hearing, Magistrate Young entered a Memorandum and Order in which he made specific findings of fact and conclusions of law in favor of the Arkansas Department of Correction. The inmates appealed and counsel was appointed. On appeal, an a/k/a alternative to the commitment name policy was first proposed.

The case was then remanded in *Salaam v. Lockhart*, 856 F.2d 1120 (8th Cir. 1988) for consideration of the analysis in *Turner v. Safley*, 482 U.S. 78 (1987) and the a/k/a alternative proposed by the respondent on appeal. A hearing was held and the District Court entered its opinion on July 10, 1989, dismissing one of the plaintiffs and most of plaintiff's complaint and directing the implementation of a new mail policy by the Arkansas Department of Correction. Respondent appealed and petitioners cross-appealed.

The Eighth Circuit reversed the District Court's finding that the a/k/a alternative was unreasonable and affirmed the District Court on the cross-appeal. The cross-appeal on mail policy is not raised in this petition.

Petition for rehearing with suggestion for rehearing en banc was timely filed and denied on July 27, 1990. Due to the extensive changes in policy and record keeping necessitated by the Eighth Circuit opinion, a motion to stay the mandate, pending the filing and the resolution of this petition, has been filed.

This petition seeks a reversal of the Eighth Circuit opinion and reinstatement of the findings of the District Court pursuant to *Turner v. Safley,* supra.

REASONS FOR GRANTING THE WRIT

I. The Eighth Circuit has improperly substituted a "balancing test" in determining the reasonableness of a prison policy for the deference standard enunciated in *Turner v. Safley* creating a split in the circuit courts of appeals in the proper application of *Turner*.

Upon reciting the *Turner* standard in their opinion, the Eighth Circuit adopts a balancing test in footnote 6 of their opinion where they state:

> The reasonableness test does not obviate the need for accommodation. Reasonableness in this context refers not only to the relation between the goals of a regulation and its means, but also to the balance struck between the needs of the prison administrators and the constitutional rights of prisoners. *Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1988) (Posner, J.). " 'In sum, there must be [a] mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.' " *Salaam I*, 856 F.2d at 1122 (quoting *Hill v. Blackwell*, 774 F.2d 338, 340 (8th Cir. 1985), quoting *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974)); *id.* at 1124.

Eighth Circuit Opinion at 5.[1]

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[1]The Second Circuit in *Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1988) upon reciting the *Turner* standard, states:

> This is not a demanding standard, and it implies that if either Reed is not a sincere Rastafarian or the regulation limiting the length of male inmates' hair strikes a reasonable balance between the interest in religious liberty and the needs of prison safety and security, he must lose on his free-exercise claim.

(Citations omitted.) (The Court in *Reed* remands for further consideration of the case by the District Court.)

Petitioners submit that this balancing test is in conflict with the deference standard enunciated in *Turner* where this Court states:

> Our task, then, as we stated in *Martinez*, is to formulate a standard of review for prisoners' constitutional claims that is responsive both to the "policy of judicial restraint regarding prisoner complaints and [to] the need to protect constitutional rights."

Turner v. Safley, 482 U.S. 78, 85 (1987), quoting *Procunier v. Martinez*, 416 U.S. 396, 406 (1974).

Proper deference cannot be afforded under a standard that simply balances institutional needs with the constitutional needs of prisoners. The balancing test espoused by the Eighth Circuit results in the court becoming the "primary arbiter of the best solution to every administrative problem" which *Turner* specifically rejects. *Turner* at 89. The Supreme Court again emphatically rejected such a position in *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) when it states:

> We take this opportunity to reaffirm our refusal, even where claims are made under the First Amendment, to "substitute our judgment on . . . difficult and sensitive matters of institutional administration." *Block v. Rutherford*, 468 U.S. 576, 588, 82 L.Ed.2d 438, 104 S.Ct. 3227 (1984), for the determinations of those charged with the formidable task of running a prison.

Id. at 353.

This case was before the Eighth Circuit following a remand for reconsideration in light of *Turner*. The Second Circuit similarly considered a prisoner case following a remand in light of *Turner*. The Second Circuit in *Fromer v. Scully*, 874 F.2d 69 (2nd Cir. 1989) found the inmate:

> "Simply [h]as not met [his] heavy burden of showing that [prison] officals have exaggerated their response to . . . genuine security considerations . . . ." *Bell v. Wolfish*, 441 U.S. at 561-62, 99 S.Ct. at 1885-86.

Id. at 76. The Second Circuit properly analyzed and applied the deference standard enunciated in *Turner*.

In *Fromer*, the District Court twice held a prison religion policy unconstitutional and the Second Circuit ultimately held it constitutional under *Turner*. In the instant case, the District Court twice upheld a prison religion policy as constitutional and the Eighth Circuit ultimately ordered the entry of injunctive relief. Petitioners submit that the Eighth Circuit's adoption of the balancing test has created an improper split in the application of the *Turner* standard and this Court's intervention is necessary to prevent further departure from the standards of this Court.

Petitioner submits that the Eighth Circuit failed to properly analyze this case under *Turner v. Safley*, (which is developed under the next point) applied an improper balancing test, and failed to recognize legitimate government interests in an enforceable policy. As a result of these mistakes, the Eighth Circuit recommends a "reasonable alternative" in which inmates are to acknowledge one name and guards are to acknowledge another for the same inmate. It is understandable that the Arkansas Department of Correction finds such a system unenforceable and the District Court found it unreasonable in and of itself.

The Arkansas Department of Correction position on the a/k/a alternative espoused by the Eighth Circuit is that it is *worse* than switching entirely to the new names. The record clearly supports that position. Counsel was authorized and did explicitly state in oral argument before

the Eighth Circuit that the Department would change to the new names if a constitutional violation was found, but did *not* want to adopt the a/k/a designation as an alternative.

No mention is ever made of the fact that the Department policy is religiously neutral despite such neutrality being a paramount consideration in *Turner* at 90; *O'Lone* at 351; *Pell v. Procunier*, 417 U.S. 817 (1974) at 828; *Bell v. Wolfish*, 441 U.S. 520 (1979) at 551; and in the recent case of *Employment Div., Department of Human Resources v. Smith*, 108 L.Ed.2d 876, 58 U.S.L.W. 4433 (April 17, 1989). Muslims committed under their Muslim names are identified by those names. The a/k/a alternative as articulated by the Eighth Circuit requires the Department to discriminate among inmates on the basis of religion by recognizing only religiously motivated name changes. This leads to "affinity groups" and charges of favoritism which were recognized as legitimate security concerns in *O'Lone*. *O'Lone* supra at 353.

The Department seeks to have a name identity policy that is the same for all inmates. This concern has been recognized as legitimate in *O'Lone* and in the Second Circuit in *Fromer v. Scully*, supra, at 76.

The a/k/a alternative at issue in this case was first raised on appeal. *Salaam v. Lockhart*, 856 F.2d 1120, 1123 (8th Cir. 1988). Although not a procedural bar to its consideration on remand, the proposed alternative has had a simplistic theoritical appeal to the Eighth Circuit which is not supported by the very legitimate administrative concerns faced by the Department. "[I]n the absence of *substantial evidence* . . . to indicate that the officials have exaggerated their response . . . courts should ordinarily defer to their expert judgment . . . ." *Turner* at 86 quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974). (Emphasis added.)

Pursuant to *Turner*, the Eighth Circuit has failed to exercise proper judicial restraint in this case and has not applied the proper standard of review.

II. The Eighth Circuit improperly applied the *Turner* analysis to a "reasonable alternative" and then failed to analyze the prison policy itself.

This case was remanded to the District Court for review of the Arkansas Department of Correction's commitment name policy in light of the four criteria enunciated in *Turner v. Safley*, 482 U.S. 78 (1987) and an "a/k/a alternative" which was proposed during the first appeal. *Salaam v. Lockhart*, 856 F.2d 1120, 1123 (8th Cir. 1988).

The commitment name policy as espoused by the Arkansas Department of Correction is simply that all inmates are to be identified for departmental purposes by the names on their original commitment papers. The a/k/a alternative as espoused by the plaintiff in this case was that he was to be addressed and recognized by his Muslim name, but he would "compromise" and allow his commitment name to remain on his clothing and records as well as the new name. The a/k/a alternative as articulated by the Eighth Circuit is that the Department would be required to add new additional names to inmate clothing and records for Muslim inmates.

It is this dual identity system which Defendant Lockhart found to be impossible to enforce as it was confusing and set up inherent confrontational problems between guards and inmates. This testimony as to such confusion and confrontational problems was accepted by the District Court and formed the basis of its finding the a/k/a alternative unreasonable in and of itself.

The a/k/a designation is unworkable and would lead to further litigation. The Eighth Circuit even recognizes this problem when it proposes that the a/k/a alternative could be withdrawn from inmates not responding to their commitment names and that guards should be encouraged to use the new names and should not bait inmates by the use of their commitment names.

The Eighth Circuit contradicts itself in it's analysis. The Court states first and correctly that the validity of the policy itself is at issue and not how it is applied to *Salaam*. The Court then improperly analyses the case and states in apparent contradiction of that standard of review that Salaam's new name would not cause a net increase in the incidence of confrontation. It is the a/k/a alternative itself which would cause an increase in confrontations even if it didn't cause Salaam to be involved in any confrontations. The Court even recognizes that Lockhart's concerns are not unfounded, but seeks to salvage an individual's rights without any acknowledgement of the Department's need to have an enforceable policy.

The Eighth Circuit states in a footnote that the District Court made no finding on the claim that the a/k/a alternative would lead to confusion. They only looked at that sub-issue as it related to records. The District Court found specifically that such a designation could lead to confusion by officers and other inmates. District Court Opinion at 6. If both names are officially recognized, are both names not required to be used in all the myriad details of prison life? Lockhart directed his testimony to that scenario and concluded that such a policy could not be enforced. The District Court recognized the potential for confrontation and confusion in the a/k/a alternative.

Mr. Lockhart was very candid in admitting that in the best of all possible worlds there might be few problems with the a/k/a alternative, but prisons do not represent the best of all possible worlds—far from it. "[T]he problems of prisons in America are complex and intractable, and more to the point, they are not readily susceptible of resolution by decrees." *Procunier v. Martinez*, 416 U.S. 396, 404-405 (1974).

Although acknowledging the four factors in *Turner*, the Court's actual analysis fails to follow those guidelines. The Court's analysis is not whether the Department's

commitment name policy is reasonable, but whether its rejection of the a/k/a alternative is reasonable. The Court concludes that the magistrate "overestimated the administrative interest in the policy" and "underestimated the significance of the religious right." Eighth Circuit Opinion at 10. Even central tenents of religion such as Jumu'ah prayer for Muslims does not require prison officials "to sacrifice legitimate penological objectives." *O'Lone* at 351-352. Their subsequent analysis is of Lockhart's concerns about the a/k/a alternative, not the commitment name policy itself. Petitioner respectfully submits that the Eighth Circuit incorrectly narrowed the scope of this case and incorrectly applied a balancing test (as developed in the previous point) to reach an "accommodation" between the parties. In the Department's view, this "accommodation" is worse than a finding of a constitutional violation.

The magistrate did not "overestimate the administrative interest in the policy", he afforded proper deference to the judgment of the prison officials. The Eighth Circuit in their analysis of the a/k/a alternative impermissibly shift the burden to the Department officials to "set up and shoot down" the a/k/a alternative; an approach rejected in *O'Lone*, supra, at 350. The clearest example of this impermissible shift in the burden of proof is where the Eighth Circuit goes through listing where there is "no evidence" to support Lockhart's concerns. Eighth Circuit Opinion at 11. Such a strict scrutiny analysis seriously hampers prison officials' ability to anticipate security problems which *Turner* holds to be improper. *Id.* at 89.

The Eighth Circuit found a "lack of evidence" of how many inmates are similarly situated to respondent. In *Fromer v. Scully*, 874 F.2d 69, 76 (2nd Cir. 1989), the Second Circuit specifically held that the District Court impermissibly shifted the burden of proof to the Department officials to establish that a large number of

Orthodox Jews were affected by the policy in question there. The District Court in the instant case properly analyzed the Department's concerns and the inmates' rights. It is the Eighth Circuit that underestimated such concerns, failed to defer to officials' justment and improperly shifted the burden of proof to the Department.

Even if the Eighth Circuit properly found the a/k/a alternative reasonable, the *Turner* analysis is not complete. The presence of a reasonable alternative *may* be considered as evidence that the Department's policy is an exaggerated response—it is not automatically determinative. In addition to the neutrality of the commitment name policy which is important to the first *Turner* factor, the Eighth Circuit never acknowledges the substantial evidence in the Department's favor on the second and third *Turner* factors, i.e. numerous alternative means of exercising their religious rights and the "ripple effect" which would be triggered by the recognition of any and all name changes.

Where is the substantial evidence of an exaggerated response? The Eighth Circuit did not analyze the record in that manner. Instead, it substituted its own judgment in an area "ill-suited to 'resolution by decree.' " *O'Lone*, 107 S.Ct. at 2404-05 quoting *Procunier v. Martinez*, 416 U.S. at 405.

Petitioner respectfully submits that the District Court's analysis is correct in this case and requests that the Eighth Circuit judgment be reversed.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 89-2341/2355EA

Bilal Ali Salaam, etc., et al.,	*
	*
Appellants/cross-appellees,	*
	* Order Denying Petition
vs.	* For Rehearing and
	* Suggestion For
A.L. Lockhart, etc., et al.,	* Rehearing En Banc
	*
Appellees/cross-appellants.	*

Appellees/cross-appellants' suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc.

Petition for rehearing by the panel is also denied.

July 27, 1990

Order Entered at the Direction of the Court:

/s/ Robert D. St. Vrain

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX B

No. 89-2341

Bilal Ali Salaam, a/k/a Kevin Robinson AND Khalil Al-Baaqee Saleem Abdullah, a/k/a Willie Blevins,	*
Appellants,	* Appeal From the United States District Court for the Eastern District of Arkansas.
v.	*
A.L. Lockhart, Superintendent of Arkansas Department of Correction, AND Larry Norris, Warden, Maximum Security Unit, Arkansas Department of Correction,	*
Appellees.	*

No. 89-2355

Bilal Ali Salaam, a/k/a Kevin Robinson AND Khalil Al-Gaaqee Saleem Abdullah, a/k/a Willie Blevins,	*
Appellees,	*
v.	*
A.L. Lockhart, Superintendent of Arkansas Department of	*

Correction, AND Larry Norris, *
Warden, Maximum Security Unit, *
Arkansas Department of *
Correction, *
*
Appellants. *

Submitted: February 15, 1990

Filed: June 13, 1990

I.

Before ARNOLD, Circuit Judge; HEANEY, Senior Circuit Judge; and BOWMAN, Circuit Judge.

HEANEY, Senior Circuit Judge.

In 1984, while incarcerated in an Arkansas state prison, Bilal Ali Salaam had his name legally changed by a state court after he converted to the Islamic faith. Salaam brought a pro se suit in 1986 seeking injunctive relief from the policy of Arkansas prison authorities to use only committed names on prison records and clothing, and in the mail room. The district court refused to appoint counsel and denied the claim in all respects. We reversed and remanded the matter for consideration under *Turner v. Safley*, 482 U.S. 78 (1987). *Salaam v. Lockhart*, 856 F.2d 1120, 1123 (8th Cir. 1988) (*Salaam* I). In particular, we noted that the easy availability of an "a/k/a alternative," the addition of Salaam's new name following his committed name on his clothing, in the prison records, and on the mail room delivery lists, might prove that the present prison policy was unreasonable. *Id.* The magistrate held a hearing and determined that the mail room policy was unreasonable but that the prison could continue to refuse to add

Salaam's new name to his committed name in its files and on his clothing.[1] We hold that the state authorities must deliver mail to Salaam addressed to him only as Salaam and must allow the addition of Salaam's current name to his clothing. The state, however, need reform its record keeping only to the extent necessary to allow Salaam to receive services and information in his new name within the prison.

> [P]rison is a complex of physical arrangements and of measures . . . which determine the total existence of certain human beings (except perhaps in the realm of the spirit, and inevitably there as well) from sundown to sundown, sleeping, waking, speaking, silent, working, playing, viewing, eating, voiding, reading, alone, with others. It is not so with members of the general adult population. State governments have not undertaken to require members of the general adult population to rise at a certain hour, eat at certain hours, live for periods with no companionship whatever, wear certain clothing, or to submit to oral and anal searches after visiting hours, nor have state governments undertaken to prohibit members of the general adult population from speaking to one another, wearing beards, embracing their spouses, or corresponding with their lovers.[2]

Nevertheless, "[p]rison walls do not form a barrier separating prison inmates from the protections of the constitution." *Turner*, 482 U.S. at 84. Among those rights that they possess, prisoners retain the right to the free exercise of religion. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987).

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[1]The magistrate also dismissed the claim of a second plaintiff, who had been paroled, for failure to prosecute. He does not appeal.

[2]*Morales v. Schmidt*, 340 F.Supp. 544, 550 (W.D. Wis. 1972) (Doyle, J.), *rev'd* 489 F.2d 1335 (7th Cir. 1973) (remanded for consideration under a different standard).

Salaam subscribes to the Islamic faith.[3] He understands his faith to require his name to take on one of the attributes of God, and he finds his former name offensive to his beliefs. Tr. at 11-12.[4] A personal name is special. It may honor the memory of a loved one, reflect a deep personal commitment, show respect or admiration for someone famous and worthy, or, as in this case, reflect a reverence for God and God's teachings. Like a baptism, bar mitzvah, or confirmation, the adoption of a new name may signify a conversion and the acceptance of responsibilities of membership in a community. The defendants do not contest that Salaam's name change was religiously motivated, that his new name has spiritual significance, or that their policy infringes on his free exercise rights.[5] Instead, they argue that the policy reasonably reflects the state's interest in security and administrative efficiency.

Prison regulations that infringe on the constitutional rights of prisoners are judged by their reasonableness. Prison officials are not required to choose the least restrictive means possible in furthering administrative interests. *Thornburgh v. Abbott*, 490 U.S. ____, 104 L.Ed.2d

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[3]He identifies his affiliation as being with the world community of Islam and indicated that he is not a member of any particular sect. Hearing Transcript 32 (May 22, 1989) (Tr.).

[4]"The adoption of Muslim names by inmates practicing that religion is generally recognized to be an exercise of both first amendment speech and religious freedom." *Felix v. Rolan*, 833 F.2d 517, 518 (5th Cir. 1987) (per curiam) (citing cases); *see also Azeez v. Fairman*, 604 F.Supp. 357, 361 (C.D. Ill. 1985), *rev'd in part*, 795 F.2d 1296 (7th Cir. 1986) (damage award overturned on qualified immunity grounds). It is common practice for a convert to change his name as the Koran provides, and the former Anglo name is thought to be a badge of a spiritually unenlightened state and a relic of slavery. *Masjid Muhammad-D.C.C. v. Keve*, 479 F.Supp. 1311, 1321-22 (D. Del. 1979). New names are generally drawn from the ninety-nine attributes of God. *See* Maulana Muhammad-Ali, *The Religion of Islam* 159 (1983) (listing).

[5]*See Salaam I*, 856 F.2d at 1124 (affirming the magistrate's exclusion of an expert witness on the Muslim faith because of the defendants' concessions).

459, 471 (1989); *O'Lone*, 482 U.S. at 350; *Turner*, 482 U.S. at 90-91. We consider four factors to determine if the regulation is reasonable: (1) whether it rationally and actually advances a neutral and legitimate government interest; (2) whether the prisoner has alternative means of exercising the same right; (3) the effect proposed accommodations will have on prison resources; and (4) whether the existence of "obvious, easy alternatives" that impose a *de minimis* cost reflect the regulation's lack of reasonableness. *Turner*, 482 U.S. at 89-91.

Our usual prefatory declaration that prisoners retain certain basic constitutional rights has meaning. We would misconstrue the recent Supreme Court decisions in *Abbott*, *O'Lone*, and *Turner* if we deferred not only to the choices between reasonable policies made by prison officials but to their justifications for the policies as well. " '[A] reasonableness standard is not toothless,' " *Abbott*, 104 L.Ed.2d at 473 (citing the government's certiorari petition). We must make sure after an independent review of the evidence that the regulation is not an exaggerated response to prison concerns. *Abbott*, 104 L.Ed.2d at 476; *Turner*, 482 U.S. at 96-99 (finding Missouri prison marriage regulations unreasonable after an independent review of the evidence). While we may not invalidate a regulation because we can imagine a more refined one, constitutional rights should be accommodated. We cannot validate prison regulations that are clearly broader in their scope or significantly more burdensome in effect than reasonable alternatives. *Turner*, 482 U.S. at 91 (relatively unburdensome alternatives can demonstrate unreasonableness).[6] Nor do alternatives have

[6]The reasonableness test does not obviate the need for accommodation. Reasonableness in this context refers not only to the relation between the goals of a regulation and its means, but also to the balance struck between the needs of the prison administrators and the constitutional rights of prisoners. *Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1988) (Posner, J.). " 'In sum, there must be [a] mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.' " *Salaam I*, 856 F.2d at 1122 (quoting *Hill v. Blackwell*, 774 F.2d 338, 340 (8th Cir. 1985), quoting *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974)); *id.* at 1124.

to be entirely cost-free; costs that are insubstantial in light of the overall maintenance of the prison are acceptable.

> In the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison's limited resources for preserving institutional order. When accommodation of an asserted right will have a significant "ripple effect" on fellow inmates or prison staff, courts should be particularly deferential . . . .
>
> . . . By the same token, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an "exaggerated response" to prison concerns.

Turner, 482 U.S. at 90. Our review is plenary. *Benzel v. Grammer*, 869 F.2d 1105, 1108 (8th Cir. 1989); *Salaam I*, 856 F.2d at 1122; *Whitney v. Brown*, 882 F.2d 1068, 1071 (6th Cir. 1989).[7]

II.

In our previous opinion, we noted the use of the a/k/a alternative in other cases and by the parties before us on all of their legal papers. *Salaam I*, 856 F.2d at 1123. We remanded this case for consideration of the a/k/a alternative, concluding that "[i]t may be that the a/k/a designation is the sort of 'obvious, easy alternative' which the Supreme Court specifically has directed the courts to examine under the fourth prong of the *Turner* criteria." *Id.*

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[7]We do not believe that the Supreme Court's recent decision in *Employment Div., Dept. of Human Resources v. Smith*, 108 L.Ed.2d 876, 58 U.S.L.W. 4433 (April 17, 1989), affects our analysis. *Smith* does not alter the rights of prisoners; it simply brings the free exercise rights of private citizens closer to those of prisoners.

A.

On remand, Salaam explained the spiritual and practical significance of having the prison recognize his name change. In addition, he testified that he had not received mail sent to him under the name of Salaam. Tr. at 14, 24. He also indicated that he had been unable to cash money orders sent under that name. Tr. at 14. Salaam was most concerned that the prison recognize on his outer file jacket his new name and that he receive the normal incidents of recognition, including mail delivery and the cashing of money orders. Tr. at 50; *id.* at 28-29. Salaam testified that he could be called both names and that he would have no adverse reaction to the use of his former name, although he prefers his new name. Tr. at 20, 132. The inclusion of Salaam's new name on his clothing also would make it easier for his fellow inmates to call him by that name.

The Director of the Arkansas Department of Corrections, A.L. Lockhart, testified on his own behalf. He explained that there was a main file or jacket maintained at each institution for the incarcerated individual, arranged alphabetically, as well as other subsidiary files maintained in different locations respecting each inmate. Tr. at 54-55. Lockhart indicated that all files and forms included the inmate's commitment number, and the same number appears together with the inmate's name on his clothing. Tr. at 60, 111. He indicated that the file jacket also currently includes the aliases of each inmate. Tr. at 56. Lockhart testified that he was not sure what the a/k/a alternative would entail in terms of changes but that he was opposed to it. Tr. at 60. He estimated that there could be as many as 400 or 450 Muslim inmates throughout Arkansas prisons. Tr. at 52 (also noting that the figure is disputed). We set forth his concerns with respect to each aspect of the case.

Lockhart's primary reason for opposing the use of the a/k/a alternative on institutional files is his belief that all

files would have to be changed and that it would be a burden to always write two names on any form. Tr. at 61-62, 71, 92-98; *id.* at 74 (no matter what relief was asked for, it would not "stop there"). In addition, he is concerned that adding a new name to files would cause confusion. For example, he argued that changing the prison record keeping would hurt the prison's ability to provide information to other law enforcement agencies during escapes or in reference to other inquiries. Tr. at 99. He is also concerned that inmates could be uncooperative if any paperwork they receive does not contain their new name. For example, he testified that he believed that if a parole order came in an inmate's former name, the inmate would refuse to leave prison. Tr. at 118. There was little testimony specific to mail delivery lists.

Lockhart also objects to the inclusion of changed names on inmate clothing. He believes that if guards persisted in using an inmate's former name, confrontations might occur. Tr. at 62, 71-72, 87. He is also concerned that it would frustrate inmate identification if an inmate were identified by only a new name and officials could not find the new name in their files. Tr. at 58.

The magistrate agreed with the defendants that the prison had a valid interest in accurate files, clothing that readily displayed an inmate's name for identification purposes, and efficient mail delivery. Memorandum and Order 3-4 (E.D. Ark. July 10, 1989). The magistrate concluded that continued use of an inmate's committed name validly and rationally furthered these interests. Without further analysis, the magistrate concluded that the prison's policy satisfied the first *Turner* factor. The magistrate decided that the second *Turner* factor also favored the defendants because Salaam had the opportunity to practice other aspects of his faith. *Id.* at 4. The magistrate concluded that the third *Turner* factor similarly favored the prison policy. He noted that there were 400-450 Muslim inmates and predicted that "those Muslim inmates similarly situated to the plaintiff would insist upon such

alteration," in part, to clog the system. He predicted a "tidal wave of unproductive paperwork." *Id.* at 5. Finally, the magistrate concluded that the a/k/a alternative was itself unreasonable. With respect to record keeping, the magistrate felt that the paperwork was more onerous than any infringement of religious liberty. *Id.* at 6. The magistrate also concluded that the addition of a second name to clothing would seriously jeopardize institutional security by leading to confusion in the filing of reports and by provoking confrontations when guards continued to use an inmate's committed name. *Id.* at 7-8. The court concluded, however, that the inclusion of an inmate's new name on prison mail lists would not compromise any valid institutional interest. *Id.* at 8.

B.

We agree with the magistrate that the validity of the policy itself, rather than the way it was applied to Salaam, is at issue. Accordingly, it was correct to analyze the potential effects of a change in the policy for similarly situated prisoners, even though this is not a class action. We also agree that other ways of exercising his religion remain open to Salaam. Nevertheless, we are unable to agree with some of the magistrate's conclusions.

First, the magistrate failed to appreciate the scope of the relief sought. For example, with respect to the first *Turner* factor, the magistrate analyzed only the state's interest in continued use of an inmate's committed name. *Id.* at 3. That is not at issue, because Salaam does not request that the prison discontinue using his committed name. Similarly, the Director of the Arkansas Department of Corrections, A.L. Lockhart, seemed confused as to the scope of the action. He did not always understand that Salaam agreed that the committed name would remain in use on the files. Tr. at 117. Lockhart's claim that the prison would be unable to assist law enforcement agencies during escapes under the a/k/a alternative presumes either the

elimination of the committed name or the forced reorganization of the prison's internal records under Salaam's new name. Neither is requested.

Second, it is apparent from the language of the magistrate's decision that he may have improperly discounted the importance of the right at issue when balancing it against the administrative burden of adding Salaam's new name to the records. *See* Order at 5-6 ("unproductive paperwork;" "remote benefit to plaintiff's religious freedom"). In our first decision, we affirmed the magistrate's decision to exclude Salaam's expert witness who would have testified regarding the tenets of Islam. *Salaam I*, 856 F.2d at 1124. With no evidence in the record on the significance of a changed name other than Salaam's testimony, the magistrate could not minimize the religious importance of a conversion name, unless Salaam's testimony was unbelievable—which it is not.

We conclude that the magistrate overestimated the administrative interest in the policy and the effects of changing it and underestimated the significance of the religious right. We address Lockhart's concerns seriatim.

Initially, Lockhart is concerned with the administrative burden of making changes to institutional files. He never, however, estimated how much time it would take to make changes. Tr. at 130. He agreed that all that would have to be done is to type in the new name on each file. Tr. at 75. Even under the assumption that all paperwork would have to be changed, Lockhart testified that less than an hour of work per inmate would be required—how much less we do not know. Tr. at 76. Even if we accept his view that the prison could not stop at simply changing the jacket, the magistrate found that there were only eight active prison files. Order at 5. The burden of adding Salaam's new name to files and lists, while not imaginary, is nevertheless not onerous. Moreover, the prison is not required to change Salaam's name wherever it

appears. In light of the relief requested, the prison must add his new name only to his file jacket and to lists with which inmates have frequent contact within the prison. The paperwork burden is minimal and we disagree with the magistrate's conclusion that the burden of changing eight folders is significant even where there are few requests for name changes. *See id.* at 5-6 (paperwork burden onerous even where minimum "ripple" effect); *cf. McCabe v. Avare*, 827 F.2d 634, 638 (9th Cir. 1987) (storage and handling of books and study materials for inmate religious group imposes *de minimis* burden on prison resources). Our conclusion is buttressed by the prison's present practice of recording all aliases and using inmate commitment numbers in addition to committed names in its filing system.[8]

The magistrate also predicated his findings regarding the administrative burden of changes on Lockhart's belief that inmates similarly situated to Salaam would request use of the a/k/a alternative and Lockhart's estimate that there were 400-450 Muslims incarcerated statewide. There are several problems with this reasoning. First, there is no evidence in the record regarding the number of prisoners situated similarly to Salaam. The relevant group of similarly situated prisoners is composed of prisoners who will change faiths while incarcerated, adopt new names incident to their conversion that are legally cognizable, and request an accommodation. There was no evidence as to how many Muslim prisoners already had religiously inspired names. Many Muslim prisoners may have been committed under their Muslim names. Lockhart testified that he did not know how many prisoners have changed

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[8]The magistrate made no finding with respect to Lockhart's claim that the use of an a/k/a alternative would lead to filing confusion, an inability to properly assist law enforcement agencies in identifying inmates during an escape, or the refusal of inmates to leave the prison if their release order came in their former name. As indicated, the prison is not required to reorganize its files. Moreover, we imagine that the inclusion of a new name, much like the recording of an alias, would be of value to other agencies.

their names in the past. Tr. at 82. Second, there was no evidence that all name change requests would be granted by state courts simultaneously. There was no showing that additional paperwork by prison authorities would have to be done all at the same time. Third, the prison has the right to contest the sincerity of any name change. Fourth, there is no additional evidence in the record to support the theory that inmates will change names with malicious intent. Finally, given the minimal effort necessary to implement the alternative for each eligible inmate, even if many inmates over time requested accommodations, we cannot agree that this would make the current policy respecting record keeping reasonable. We believe in this regard that Lockhart's testimony and the magistrate's finding that hundreds of inmates would clog the system consist of conjecture and "the piling of conjecture upon conjecture." *Reed v. Faulkner*, 842 F.2d at 963.

Accordingly, we disagree with the magistrate's conclusion that the paperwork burden outweighs Salaam's religions interest in the use of his new name. We hold that the a/k/a alternative proves that the prison policy of excluding new names from its files and internal lists is unreasonable. For this reason, we affirm the magistrate's finding with respect to the mail lists. Other courts have reached similar conclusions. *Barrett v. Virginia*, 689 F.2d 498, 503 (4th Cir. 1982) (name change prohibition unreasonable); *Azeez v. Fairman*, 604 F.Supp. at 361 (a/k/a alternative protects administrative interests); *Masjid Muhammad-D.C.C. v. Keve*, 479 F.Supp. at 1324; *id.* at 1325 (mail); *see also Felix v. Rolan*, 833 F.2d at 519 (prison's a/k/a alternative reasonable accommodation).

Our conclusion that the prison's refusal to alter its current record keeping practices is unreasonable is buttressed by the restrictiveness of the policy relative to the valid prison interests recognized by Arkansas' elected officials. At the time Bilal Ali Salaam changed his name, Arkansas allowed any citizen to petition a court for the

name change. Ark. Stat. Ann. § 9-2-101(a) (1987). State law provided that "[a]ny person whose name may be so changed by judgment or decree of any of the courts shall afterward be known and designated, sue and be sued, plead and be impleaded, by the name thus conferred." Ark. Stat. Ann. § 9-2-102 (1987). In 1985, Arkansas amended section 101(a) to deprive its courts of the power to grant name changes requested by state prisoners. In 1987, Arkansas removed the 1985 amendment to section 101(a), and instead amended section 102 to require that regardless of name changes, the "records of persons under the jurisdiction and supervision of the Department of Correction shall continue to reflect the name as committed to the Department's jurisdiction and supervision . . . " *See* Ark. Stat. Ann. §§ 9-2-101, 9-2-102 (Supp. 1989). State law thus does not prohibit the addition of a second name to prison records. After repeated consideration in recent years, Arkansas has made a deliberate judgment to permit inmates to change their names, providing only that prison authorities may continue to use committed names in prison records. The policy of the Department of Corrections with respect to its records thus far exceeds in its scope the administrative interests recognized by state law. The a/k/a alternative which permits continued use of committed names in prison records as Arkansas requires demonstrates the unreasonableness of the current practice.

Next, Lockhart opposes the addition of Salaam's new name where his former name and commitment number appear on his clothing. Lockhart fears confrontation and misidentification. He testified that there would be no problem using the committed name, commitment number, and new name together on clothing provided that the inmates would respond to any of three. Tr. at 60-61. He doubted that inmates would remain congenial, however, when called by their former name. Tr. at 62. He also testified that guards who called Salaam by his new name at present were violating department policy which allows only the name or number on the inmate's shirt to be used. Tr. at 65; *id.* at 86 (not strictly enforced).

The potential for confrontation exists under the present system because the current policy prohibits guards from ever using Salaam's legal name. Lockhart testified that there are currently inmates who will not respond to their committed names. Tr. at 62. The a/k/a alternative, in contrast, grants guards the ability to use the name an inmate wishes to be called by and makes his name immediately observable. We cannot say, however, that Lockhart's concerns are unfounded. Some inmates might take an opportunity to cause trouble. It is not apparent, however, why the addition of Salaam's new name would cause a net increase in the incidence of confrontation. Moreover, if the rights of those who would cooperate could be sacrificed in fear of those who would cause trouble under any regime, officials could ignore any individual right. Inmates do not abandon their rights to individualized judgments about their behavior. Salaam has testified that he would respond to his former name, his commitment number, or his new name. Lockhart offered no evidence that Salaam has ever caused a problem since 1984, when his name was changed. Existing policies give prison officials the right to discipline those who do not follow orders. The prison may certainly withdraw the a/k/a alternative from any prisoner who is informed that he must respond to a former name and who repeatedly fails to do so. We also wish to emphasize that, in the alternative, guards can be instructed to make an effort to use prisoners' legal names. Guards should not deliberately "bait" inmates, and we cannot justify the prison policies on any such propensity. The imposition on the prison staff would be clearly *de minimis*.[9]

We similarly cannot accept Lockhart's fear of misidentification. The a/k/a alternative does not eliminate the display of the committed name and number on the inmate's clothing. To the extent a disciplinary violation is reported only under an inmate's new name, there should be

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[9]The policy the defendants ultimately develop will no doubt be consistent with their desire to avoid confrontational situations.

no problem in identifying the inmate because under the a/k/a alternative, the prison must also record the new name in its files. Lockhart's fear is based on the current record keeping practice.

> Q. I take it from that you mean that if Bilal was to attack another inmate and that inmate came to you and said, "This guy named 'Bilal' attacked me," and you would go through your records and you couldn't find anybody named Bilal; is that—
>
> A. That's correct.

Tr. at 58. Moreover, the situation is no different from that which currently exists with the use of nicknames within the prison. We find the refusal of the defendants to add Salaam's legal name to his clothing to be unreasonable.

III.

Accordingly, the judgment of the magistrate is affirmed in part and reversed in part. This matter is remanded to the magistrate for the entry of injunctive relief consistent with this opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION
(Filed July 10, 1989)
(Carl R. Brents, Clerk)

BILAL ALI SALAAM, a/k/a
Kevin Robinson, and
KHALIL AL-BAAQEE, a/k/a
Willie Blevins PLAINTIFFS

V. CASE NO. PB-C-86-199

LARRY NORRIS, Warden, Tucker Maximum
Security Unit, and A.L. LOCKHART,
Director, Arkansas Department of
Correction DEFENDANTS

JUDGMENT

Pursuant to the Memorandum and Order filed this date, judgment is hereby entered directing the Arkansas Department of Correction to implement a policy which will allow Muslim inmates to receive mail in their legally changed post-commitment name. The remainder of the plaintiff's complaint is dismissed.

DATED this 10th day of July, 1989.

/s/ H. David Young
United States Magistrate

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COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP
ON 7/11/89 BY /s/ M. JOHNSON

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION
(Filed July 10, 1989)
(Carl R. Brents, Clerk)

BILAL ALI SALAAM, a/k/a
Kevin Robinson, and
KHALIL AL-BAAQEE, a/k/a
Willie Blevins — PLAINTIFFS

V. — CASE NO. PB-C-86-199

LARRY NORRIS, Warden, Tucker Maximum
Security Unit, and A.L. LOCKHART,
Director, Arkansas Department of
Correction — DEFENDANTS

MEMORANDUM AND ORDER

This 42 U.S.C. § 1983 action is before the Court upon remand from the Court of Appeals. In his complaint, plaintiff[1] alleges that he has legally changed his name, but that the defendants have instituted a "committed name" policy which unconstitutionally infringes upon his freedom of religion.[2] Specifically, he complains about the Arkansas Department of Correction (ADC) policies of (1) refusing to

[1]Khalil Al-Baaqee was originally a party to this action, but, after his parole, he apparently lost interest in the litigation, as evidenced by his failure to appear at the evidentiary hearing. This failure to appear constitutes a failure to prosecute on the part of Al-Baaqee and the complaint, as to him, is dismissed. He, of course, would have been entitled to no injunctive relief, in any event, since he is no longer subject to ADC rules and regulations.

[2]It is worthy of note, with respect to any suggestion that the Muslim believers are being discriminated against generally within the ADC, that an inmate who enters the ADC with a Muslim name is known officially by this committed name.

alter inmate institutional records to reflect the Muslim name; (2) refusing to allow an inmate to have his Muslim name on his clothing; and (3) insistence of the ADC that mail contain an inmate's former name as well as his Muslim name. Plaintiff, in his original and amended complaint, also asserted that he suffered harassment as a result of his name change. However, this latter allegation was previously resolved against the plaintiff by this Court, and that determination was not disturbed on appeal. At any rate, at the most recent hearing with regard to this harassment claim, no credible proof was introduced which corroborated any such harassment.

In part, this case was remanded because of the Supreme Court's decision in *Turner v. Safley*, 107 S.Ct. 2254 (1987), which was rendered while plaintiff's appeal was pending. This case set forth four factors which must be considered in determining whether the ADC policy impermissibly infringes upon plaintiff's First Amendment rights. Those factors are:

> (1) whether there is a valid, rational connection between the regulation and legitimate governmental interest put forward to justify it;
>
> (2) whether alternative means of exercising their rights remain open to the prisoners;
>
> (3) whether accommodation of the asserted rights will trigger a "ripple effect" on fellow inmates and prison staff; and
>
> (4) whether a ready alternative to the regulation would fully accommodate the prisoners' rights at de minimins cost to the valid penological interest.

Additionally, the remand directed that this Court consider plaintiff's suggested "a/k/a alternative," which was not advanced until after he took an appeal of this Court's earlier decision denying relief. In particular, this alternative must

be reviewed in light of the fourth *Turner v. Safley* factor set forth above. Is the a/k/a designation a ready alternative to the regulation which would fully accommodate the plaintiff's rights at a de minimis cost to the valid penological interest? An evidentiary hearing was held, and the following constitute the Court's findings of fact and conclusions of law herein.[3]

A valid, rational connection exists between the challenged ADC policies and the legitimate government interests espoused by the ADC.[4] As far as the maintenance of institutionnal files, the ADC obviously has a legitimate governmental interest in accurate and manageable files. The need for ready access to the many files generated by each inmate is obvious. The need for a single identifying system was emphasized by the fact that each inmate generates several separate institutional files. To avoid confusion, a simple system must be employed.

Legitimate identification and security reasons were advanced by the Department in defense of its requirement that an inmate's committed name appear on his clothing. Without an accurate method of identifying inmates, correctional officers would be at a serious disadvantage in attempting to maintain order and security. In particular, officers would be unable to issue direct orders and assess institutional disciplinaries.[5] Without a ready, reliable basis for inmate identification, an officer could easily be confused or misled in his attempt to maintain security and discipline.

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[3]The findings of fact and conclusions of law made in the Court's December 3, 1986, Memorandum and Order are incorporated by reference herein.

[4]The Court's December 3, 1986, Memorandum and Order described these reasons as compelling when it reviewed the regulations at issue under a more heightened scrutiny than that called for under *Turner v. Safley*.

[5]It should be noted that, during cross-examination, plaintiff's counsel informed Mr. Lockhart that he didn't question the sincerity of Lockhart's security concerns.

The ADC also offered a legitimate reason for its policy of requiring that an inmate's committed name appear on his mail. This requirement enhanced the Department's legitimate effort to effectively and efficiently make delivery of mail to inmates.

The second *Turner v. Safley* factor weighs in favor of the ADC regulations at issue because the Muslim inmates have a number of alternative means of exercising their religious rights. Muslim inmates have opportunities ranging from personal devotion to group services conducted by an ADC-paid Muslim chaplain. Additionally, these inmates are allowed to observe Jumah Prayer and religious feasts and to receive religiously acceptable diets. In fact, as described in the Court's December 3, 1986, Memorandum and Order, the ADC regulations at issue have only a minimal effect upon plaintiff's freedom to practice his religion.

The third *Turner v. Safley* factor (whether accommodation of the asserted right will trigger a "ripple effect" on fellow inmates and prison staff) also weighs in favor of the ADC's posture in this case. There are approximately 400-450 Muslim inmates within the ADC. Each inmate has at least eight active files (inmate jacket, work assignment, grievance, vocational rehabilitation, visitation, internal affairs, medical, mental health), and his name appears on a number of daily lists (sick call, doctor's call, work call, visitation, court, classification, T.V. call, yard call). The administrative burden of altering these records would be onerous, and it is only reasonable to conclude that those Muslim inmates similarly situated to the plaintiff would insist upon such alteration. Rather than a "ripple effect," a more accurate description would be a "tidal wave" of unproductive paperwork. Furthermore, the Court credits the testimony of Lockhart that a significant number of inmates would undergo such a name change and insist upon similar treatment simply as a means of "clogging the system."

The final *Turner v. Safley* factor appears to be the primary reason for the remand herein. Is there a ready alternative to the ADC regulations at issue which would fully accommodate the prisoners' rights at de minimis cost to the valid penological interest? In particular, is the a/k/a alternative a reasonable one?

With regard to the plaintiff's desire to have his institutional files modified to reflect such an a/k/a designation, the Court cannot blind itself to the likely "ripple effect" noted above. Even with a minimal "ripple effect," the administrative burden and cost of requiring such a clerical undertaking is unreasonable. The remote benefit to plaintiff's religious freedom of such a filing system is greatly outweighed by the administrative cost to the ADC. *See Akbar v. Canney*, 634 F.2d 339 (6th Cir. 1980), *cert. denied*, 450 U.S. 1002 (1981).

Because the number of uniforms worn by each inmate is not great, the actual financial cost and expense of time required to implement a clothing a/k/a designation would not seem as onerrous a burden as the sought-after file alteration. However, there are other costs to be considered. Significantly, the Court concludes that institutional security could be seriously jeopardized by such a clothing designation. Both correctional officers and other inmates could be confused by such a designation in such matters as disciplinaries and grievances. (E.g.: Would officers and other inmates be *required* to use both names of an inmate when referring to him in a witness statement? What if only the non-Muslim name could be remembered?) Secondly, the Court agrees with Lockhart that such a multiple name designation creates the real likelihood of confrontation between ADC officers and inmates with an a/k/a designation on their uniforms. Having succeeded in acquiring such a designation on a uniform, it is reasonable to expect that the inmate would insist that his Muslim name be honored. It was clear at the hearing that the plaintiff expected that an a/k/a designation on his clothing would lead to the officers

having to call him by his Muslim name when issuing orders directing his behavior. However, in rebuttal, plaintiff testified that he would not insist upon such oral recognition if his uniform were to be altered to reflect the a/k/a designation. Notwithstanding the plaintiff's expressed good intentions in court, the undersigned can foresee the development of confrontations between security staff and Muslim inmates over this very issue. This potential security risk alone is enough to render the a/k/a designation unreasonable.[6]

The mail issue is another matter. It would not appear to be any more than a de minimis impact upon the ADC to require it to implement a system whereby Muslim inmates could receive their mail and money orders in their newly acquired Muslim name. For example, the ADC could require inmates to notify the mail room of their name change, and this change could be noted on a master list which could be cross-referenced to ensure proper delivery. Requiring this sort of action on the part of ADC will have little or no impact upon the valid security and administrative efficiency interests of the ADC. This sort of accommodation is the sort of "ready alternative" envisioned in *Turner v. Safley, supra.* It will not compromise valid institutional interests, but will enhance plaintiff's free exercise of his religion.

In accordance with the foregoing, the ADC will be directed to implement a policy which will allow Muslim inmates to receive mail in their legally changed post-commitment name. The remainder of the plaintiff's complaint is dismissed.

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[6]Plaintiff also testified that Muslim names were chosen by converts from a list of 99 attributes of God. This would necessarily lead to a substantial amount of duplication and, therefore, increased confusion if very many of the 400-450 Muslim inmates underwent the name changing process.

IT IS SO ORDERED this 10th day of July, 1989.

/s/ H. David Young
United States Magistrate

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CLERK

(2)

No. 90-701

In The

Supreme Court of the United States

October Term, 1990

A. L. LOCKHART, Superintendent,
Arkansas Department of Correction;
LARRY NORRIS, Warden,
Maximum Security Unit, Arkansas
Department of Correction,

Petitioners,

v.

BILAL ALI SALAAM,
a/k/a KEVIN ROBINSON,

Respondent.

On Writ Of Certiorari From The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 90-701

In The

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October Term, 1990

A. L. LOCKHART, Superintendent,
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v.

BILAL ALI SALAAM,
a/k/a KEVIN ROBINSON,

Respondent.

On Writ Of Certiorari From The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Respondent is an inmate in the custody of the Arkansas Department of Correction and was committed under the name Kevin Robinson. While in prison, Respondent converted to Islam and legally changed his name to Bilal Ali Salaam. Respondent's religion required

him to adopt his new name in order to demonstrate his new state of spiritual enlightenment. Petitioners adopted and implemented a committed name policy which provides that only the inmate's committed name may appear on the inmate's uniforms, institutional records and ingoing and outgoing mail. Respondent filed a complaint against Petitioners under 42 U.S.C. § 1983 in which he alleged Petitioners' committed name policy abridged his free exercise right under the First Amendment.

The District Court upheld the committed name policy and entered judgment for Petitioners. On appeal, Respondent proposed an "a/k/a" alternative to the committed name policy. Respondent's proposed "a/k/a" alternative would require Petitioners to place Respondent's Muslim name in addition to his committed name on prison clothing and on the "inmate jacket" or main institution file so that Respondent could obtain services from the prison such as cashing money orders, commissary privileges, law library privileges and ingoing and outgoing mail by the use of his Muslim name.

The Court of Appeals remanded the case to the District Court with instructions to review Petitioners' committed name policy in light of Respondent's "a/k/a" alternative and the reasonable relationship standard set forth in *Turner v. Safley*, 482 U.S. 78 (1987). *Salaam v. Lockhart*, 856 F.2d 1120, 1123 (8th Cir. 1988) ("Salaam I").

On remand, the District Court held that the committed name policy did not violate Respondent's free exercise right and the "a/k/a" alternative would have more than *de minimis* effect on the asserted penological interests.

On appeal, the Court of Appeals reversed the District Court and held that the committed name policy violated Respondent's free exercise right in light of the proposed "a/k/a" alternative. *Salaam v. Lockhart*, 905 F.2d 1168 (8th Cir. 1990) ("Salaam II").

SUMMARY OF ARGUMENT

The decision below is legally correct and fair to the parties. It does not create a split in the circuits. The essence of Petitioners' challenge is that the court below erred in its factual findings rather than in the application of legal standards. The Petition for Writ of Certiorari does not meet any of the enumerated circumstances in Rule 10 of the Rules of Supreme Court for the granting of Certiorari. Nor does the Petition set forth any other special or important reason for the granting of Certiorari in this case.

ARGUMENT

I.

THE DECISION BELOW IS LEGALLY CORRECT AND THE RESULT IS FAIR.

In *Salaam I* the Court of Appeals remanded the matter for further consideration under *Turner* and noted that Respondent's proposed "a/k/a" alternative might be evidence that the committed name policy was unreasonable when examined under the fourth *Turner* criterion. The fourth *Turner* criterion provides that "if an inmate can

point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." 482 U.S. at 90-91. In *Salaam II* the Court of Appeals applied the four *Turner* criteria and held the Petitioners' committed name policy did not satisfy *Turner*'s reasonable relationship standard.

Petitioners misstate the nature of the "a/k/a" proposal on page nine of their Petition when they state the Respondent "was to be addressed and recognized by his Muslim name but he would 'compromise' and allow his commitment name to remain on his clothing and records as well as the new name." In fact, the "a/k/a" proposal only contemplated the placement of the Muslim name and the committed name on the prison clothing and on the "inmate jacket" or main institution file so that Respondent could obtain services from the prison such as cashing money orders, commissary privileges, law library privileges and ingoing and outgoing mail by the use of his Muslim name. Moreover, Respondent testified that correction officers would not be required to address him by his Muslim name and that he would respond to his committed name.

The Court of Appeals found that the evidence demonstrated the "a/k/a" alternative would have no more than *de minimis* effect on the asserted penological interests of administrative ease, ability to readily identify inmates and prevention of confrontations. The court found the burden of adding Respondent's Muslim name to certain files and lists was not onerous. 905 F.2d at 1173. It found Petitioners' fear of a "ripple effect" in the form

of numerous insincere name changes designed to maliciously clog the system constituted the "piling of conjecture upon conjecture." *Id.* at 1174. Finally, the court found Petitioners' fears of confrontations and misidentification were not supported by the record. *Id.* at 1175. The standard applied by the court below was no more strict than that set forth in *Turner*. The evidence simply established no reasonable relationship between the committed name policy and the asserted penological objectives in light of the "a/k/a" proposal.

Moreover, the result below is fair to all concerned. Respondent did not receive the "all or nothing" relief originally prayed for but agreed to a mutual accommodation of his First Amendment right and Petitioners' valid penological interests.

II.

THE DECISION BELOW DOES NOT CREATE A SPLIT IN THE CIRCUITS.

Petitioners misconstrue the decision below when they characterize the Eighth Circuit's analysis as a balancing test. The Eighth Circuit simply applied the *Turner* reasonable relationship test. It construed *Turner* and *Thornburg v. Abbott*, 109 S.Ct. 1874 (1989) as requiring it to "make sure after an independent review of the evidence that the regulation is not an exaggerated response to prison concerns." 905 F.2d at 1171.

Indeed, other circuits have applied the *Turner* criteria and reached the conclusion the challenged prison regulation is not reasonably related to the asserted penological interest. *Valentine v. Beyer*, 850 F.2d 95 (3rd Cir. 1988);

DeMallory v. Cullen, 855 F.2d 442 (7th Cir. 1988); *Whitney v. Brown*, 882 F.2d 1068 (6th Cir. 1989); *Williams v. Lane*, 851 F.2d 867 (7th Cir. 1988); *Tribble v. Gardner*, 860 F.2d 321 (9th Cir. 1988).

In short, merely because the circuits reach different results when the *Turner* standard is applied to different fact situations does not mean the circuits are split.

III.

THE ESSENCE OF PETITIONERS' CHALLENGE IS THAT THE COURT BELOW ERRED IN ITS FACTUAL FINDINGS RATHER THAN IN THE APPLICATION OF LEGAL STANDARDS.

A fair reading of the opinion below leads to the conclusion the Court of Appeals applied the *Turner* reasonable relationship test to the evidence in the record. It cannot be denied that the Court of Appeals was required to determine the effect of Respondent's "a/k/a" alternative on the penological interests the committed name policy purportedly serves.

Thus, Petitioners do not ask this Court to settle an important, unsettled question of federal law but to resolve factual issues. Those issues include:

1) how much paperwork would the "a/k/a" alternative involve;

2) would Muslim inmates use the "a/k/a" alternative as a pretext to clog the system or cause confrontations; and

3) would the "a/k/a" alternative create confusion regarding an inmate's identity.

Respondent respectfully submits that a review of this case would require the resolution of numerous factual issues and, accordingly, does not warrant the exercise of this Court's discretionary Certiorari jurisdiction.

CONCLUSION

The decision below was correct on the law and reached an equitable result. No special or important reason exists for granting the Petition because there is no conflict between the circuits or unsettled question of federal law.

Respectfully submitted,

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(3)

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In the

Supreme Court of the United States

OCTOBER TERM, 1990

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V.

BILAL ALI SALAAM, a/k/a KEVIN ROBINSON ..... *RESPONDENT*

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR GRANTING THE WRIT

I. The Eighth Circuit has improperly substituted a "balancing test" in determining the reasonableness of a prison policy for the deference standard enunciated in *Turner v. Safley* creating a split in the circuit courts of appeals in the proper application of *Turner.*

Respondent claims in his Point II there is not a split in the circuits "merely because the circuits reach different results when the *Turner* standard is applied to *different* fact situations." (Emphasis added) In a recent case out of the Fourth Circuit, *Ali v. Dixon*, 912 F.2d 86 (August 28, 1990)

the *Turner* standard was applied to virtually the *same* fact situation which clearly illustrates the improper application of the *Turner* standard in this case.

Ali was an appeal of summary judgment granted in favor of corrections officials. Reversal was granted to further develop two issues, but the issue of the prison's staff use of commitment names only was affirmed. The Court states:

> Warden Dixon claimed in his affidavit that it is important for the staff to know the prisoners by name and that continued use of a prisoner's committed name facilitates the desired familiarity. There are obvious difficulties present if prison staff must memorize a second name after having made the effort to learn the first.

Petitioners put forth the same penological interests in the instant case as did the officials in *Ali*. They also put forth additional reasons. Their justification for the commitment name policy was found credible and controlling under the *Turner* standard by the district court. The Fourth Circuit recognizes the "obvious difficulties" in recognizing inmates by two names whereas the Eighth Circuit seeks to make an accommodation under their balancing test. The latter action is not appropriate under the *Turner* standard or the policy of judicial restraint in *Procunier v. Martinez*, 416 U.S. 396, 406 (1974).

II. The Eighth Circuit improperly applied the *Turner* analysis to a "reasonable alternative" and then failed to analyze the prison policy itself.

Respondent states in his Point III that petitioners challenge the Court's factual findings. The district court factual findings were in petitioners' favor. It is the legal analysis under *Turner* and the application of the law to these facts by the Eighth Circuit which is challenged. *Ali v.*

Dixon, supra, illustrates that the proper application of the *Turner standard* and proper deference to the judgment of correctional administrators was not afforded in the instant case.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted,

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